



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



ARNOLD
SCHWARZENEGGER
GOVERNOR

For Meeting Date: December 11, 2008

Agenda Item No. 12: Public Hearing: Issuance of an Order to Comply to Super Creek Quarry (formerly Painted Hills Mine), (CA Mine ID #91-33-0003), Whitewater Rock & Supply Company (Operator), Alan Bankus (Agent), City of Desert Hot Springs, to Correct Violations of the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.) and the Approved Reclamation Plan.

INTRODUCTION: The State Mining and Geology Board (SMGB) is the lead agency pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code Section 2710 et seq.) for all surface mine operations in the City of Desert Hot Springs. During conduct of a site inspection performed on November 27, 2007, several violations and corrective measures were identified. Such violations were deemed, in part, as substantial deviations from the approved reclamation plan. At its December 13, 2007, regular business meeting, the SMGB requested that an amended reclamation plan that adequately addressed long-outstanding issues be provided to the SMGB by January 31, 2008, and directed the Executive Officer to issue a Notice of Violation (NOV) should such submittal not be received. A Notice of Violation was issued by the Executive Officer on July 1, 2008. The SMGB is presently considering issuance of an Order to Comply.

STATUTORY AND REGULATORY AUTHORITY: In situations when a surface mine site does not have an adequate reclamation plan or financial assurance, PRC Section 2770(d) states:

"The lead agency's review of reclamation plans submitted pursuant to subdivision (b) or of financial assurances pursuant to subdivision (c) is limited to whether the plan or the financial assurances substantially meet the applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, but, in any event, the lead agency shall require that financial assurances for reclamation be sufficient to perform reclamation of lands remaining disturbed. Reclamation plans or financial assurances determined to substantially meet these requirements shall be approved by the lead agency for purposes of this chapter. Reclamation plans or financial assurances determined not to substantially meet these requirements shall be returned to the operator within 60 days. The operator has 60 days to revise the plan or financial assurances to address identified deficiencies, at which time the revised plan or financial assurances shall be returned to the lead agency for review and approval..."



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PRC Section 2774.1(a) further states:

“Except as provided in subdivision (i) of Section 2770, if the lead agency or the director determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the director may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the lead agency's or the director's notification, the lead agency or the director may issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities.”

Should site conditions prove that a site can not be reclaimed in a manner consistent with its respective approved reclamation plan, California Code of Regulations (CCR) Section 3502(e) requires that:

“An amended reclamation plan shall be filed if the lead agency determines, after an inspection, that the surface mining operation can no longer be reclaimed in accordance with its approved reclamation plan. Such amended plan shall incorporate current reclamation standards as described in Chapter 9 (commencing with Section 2710) and Title 14 of the California Code of Regulations commencing with Section 3700.”

BACKGROUND: The Super Creek Quarry (formerly Painted Hills Mine) is located in the City of Desert Hot Springs and has produced decorative rock with sand as a by-product since about 1954. Located along the eastern margin of San Geronio Pass, the site is surrounded by land managed by the Bureau of Land Management (BLM). Access to the site is via a BLM access/haul road, which runs along the ridge immediately east of the south-flowing Whitewater River. The meandering and intermittent southerly-flowing Super Creek borders the toe of the east-southeast facing tailings.

Existing cut slopes are approximately 130 feet in maximum height with localized pitches approaching near vertical. Final configuration of slopes are to be northeast-to-east to southeast facing cut slopes, approximately 150 feet in maximum height and as steep as 1H:1V. Existing pre-SMARA tailing slopes exist on the northeastern flank of the quarry, and immediately northeast of the access road to the quarry. Sheet 1 of 1 of the 1993 Revised Supplement to the Reclamation Plan denotes Post-SMARA, Present and Future Tailings areas. These tailing slopes are approximately 300 feet in height, and are inclined as steep



as 1.2H:1V (about 40 degrees from the horizontal). Field measurements of tailings slope gradients at time of the recent October 29, 2008, inspection ranged from approximately 35 to 40 degrees. A one- to three- foot high, approximately thirty foot wide, possible headscarp feature was noted near the top of the eastern tailings slope just east of the eastern processing area during the 2007 annual inspection. This feature was revisited during the most recent inspection and determined to most likely be a tension crack resulting from differential settling of previously sidecast tailings material, versus a larger landslide feature.

A summary of pertinent actions is summarized below:

Pre-1975	Site operated by the Whitewater Rock and Supply Company for many years prior to 1975. Operations in the area commenced prior to 1954.
July 1978	Reclamation Plan submitted and subsequently approved. Area encompassed by the Reclamation Plan is triangular in shape and totals about 80 acres at an elevation between 2200 and 2500 feet above mean sea level.
July 1992	Supplement to 1978 Reclamation Plan (RP 108) submitted and subsequently approved.
September 1993	1992 Supplement to the 1978 Reclamation Plan was revised and subsequently approved. Continuing excavations occurred from about 2350 to 2220 feet elevation above mean sea level.
April 4, 2004	NOV issued for failure to provide an adjusted financial assurance.
April 26, 2004	Super Creek Quarry Expansion – BLM Plan of Operations and Reclamation Plan submitted by operator, reviewed by SMGB and OMR staff, with comments forwarded to the operator.
January 19, 2005	NOV issued for inadequate revegetation program and erosion control resulting in encroachment onto adjacent land.
March 10, 2005	Order to Comply considered by SMGB.



February 22, 2007 September 2006 revision of Super Creek Quarry Expansion – BLM Plan of Operations and Reclamation Plan, as submitted by operator, reviewed by SMGB and OMR staff, with comments forwarded to the operator.

November 27, 2007 Site inspected with outstanding violations noted.

When the site was inspected by the SMGB staff on November 27, 2007, three violations were noted:

- The revegetation program had not been maintained in a manner set forth in the approved 1992 Revised Supplement to the Reclamation Plan.
- A landslide headscarp noted near the top of the eastern tailings slope indicated potential ongoing instability.
- Soil erosion control measures had not been fully implemented at the toe of the tailings slopes.

The following corrective measures were offered:

- Further efforts were required to implement and maintain the revegetation test plot program in accordance with the approved Reclamation Plan, or revise such program.
- Tailings slopes should be reviewed and periodically monitored by a licensed geotechnical engineer or certified engineering geologist, and corrective measures implemented as appropriate.
- Continued soil erosion control efforts should be implemented on the tailings slopes, such as additional rip-rap placement and slope contouring.

The following recommendation was also offered:

- The financial assurance amount should be reviewed and updated following SMGB and OMR review and comment upon the



forthcoming revised amended reclamation plan for the Super Creek Quarry expansion.

During its December 13, 2007 Regular Business Meeting the SMGB requested that an amended reclamation plan that adequately addresses the issues noted above, and in our earlier correspondence dated April 25, 2006 and February 22, 2007, be provided to the SMGB by January 31, 2008. The 2007 SMARA Mine Inspection report also recommended that the financial assurance amount should be re-evaluated and adjusted “...*following SMGB and OMR review and comment upon the forthcoming revised amended reclamation plan for the Super Creek Quarry expansion.*”

On March 10, 2008, the SMGB received an Addendum to the 1992 Reclamation Plan dated February 2008, in lieu of an amended reclamation plan as requested. Upon review by OMR and SMGB staff, the submittal was deemed grossly inadequate, and a reiteration of outstanding issues and comments were provided to the operator in correspondence dated May 13, 2008.

On July 1, 2008, the operator was sent a Notice of Violation by Certified Mail, which was received by the operator on July 7, 2008. According to that Notice, the operator was to provide to the SMGB office a draft amended reclamation plan that addressed the violations, or provide documentation that the physical conditions at the site had been corrected. This information was to be provided to the SMGB office not later than September 5, 2008. Such amended reclamation plan was received on September 8, 2008, but was deemed inadequate.

A site inspection was performed by SMGB staff on October 29, 2008. In addition, on October 29, 2008 a meeting was held between SMGB and OMR staff, BLM staff, and the operator and his consultant and legal counsel, and outstanding issues were discussed. Following this meeting a brief site visit to the quarry was attended by SMGB, OMR and BLM staff and the operator.

An amended reclamation plan, prepared by the Lilburn Corporation and titled “*Super Creek Quarry Expansion – BLM Plan of Operations and Amended Reclamation Plan No. 137,*” dated November 2008, was received by the SMGB on December 2, 2008. This amended reclamation plan is a significant improvement in comparison to previous submittals, and is currently under review by SMGB and OMR staff. A preliminary review indicates that issues pertaining to slope instability and revegetation remain, and site conditions remain out of compliance with certain performance standards contained in the SMGB’s regulations. Following a more comprehensive review of the amended reclamation plan by SMGB and OMR staff, such deficiencies will be clearly identified and forwarded to the operator to be addressed in an appropriate manner.



CONSIDERATIONS OF THE SMGB: The SMGB must determine if the operator is in violation of the approved reclamation plan, and whether he has shown good faith in complying with the SMGB's NOV and Order to Comply. Pursuant to PRC Section 2774.1(b), the SMGB shall conduct a public hearing to determine, based on the record before it, if the evidence before the SMGB substantially supports the basis for the Order to Comply at the time the Order was issued. If the SMGB finds that the evidence in the record supports the issuance of the order, the SMGB shall uphold the order and any effective date contained in the Order. If no effective date is contained in the order, then the SMGB shall set a date upon which the Order takes effect. If the SMGB finds that the evidence in the record does not substantially support the order, then the SMGB shall not uphold the order.

EXECUTIVE OFFICER'S RECOMMENDATION: The Executive Officer is satisfied that the operator has responded in a timely fashion to address the indicated violations with appropriate corrective measures. Although outstanding deficiencies remain to be resolved, it is the opinion of the Executive Officer that the operator has taken appropriate actions toward achieving an amended reclamation plan which incorporates expansion of the existing footprint, and bringing this surface mining operation into compliance with SMARA and the SMGB's regulations. Therefore, the Executive Officer recommends that the SMGB not issue an Order to Comply at this time, and that this matter be reconsidered at the SMGB's regular business meeting scheduled for March 12, 2009.

SUGGESTED MOTION LANGUAGE:

To NOT issue an Order to Comply:

Mr. Chairman, in light of the information before the SMGB today, I move that the Board not issue an Order to Comply to Whitewater Rock and Supply Company, owner and operator of the Super Creek Quarry (CA Mine ID #91-33-0003), because the operator appears to have taken appropriate measures toward correcting the cited violations to the reclamation plan, and that this Board revisit this matter at its regular business meeting scheduled for March 12, 2009.

Respectfully submitted:

Stephen M. Testa
Executive Officer



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